IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

WP(C).No. 31857 of 2007(P)

PETITIONER:

MARYAM JOSEPH @ MARYAM YOUSEPH,
AGED 43, D/O LATE JOSEPH, PADIPPURAKKAL HOUSE,
MULANTHURUTHY VILLAGE, KANAYANNOOR TALUK,
ERNAKULAM DIST, NOW EMPLOYED
AT UNITED ARAB EMIRATES, P.O.BOX.57888, DUBAI,
REP. BY P/A HOLDER, ABDUL SALAM, S/O KUNJABDULLAH,
RESIDING AT
PADIPPURAKAL HOUSE,MULANTHURUTHY, ERNAKULAM DISTRICT.

BY ADV. SMT.AYSHA YOUSEFF
SMT.MOLLY JACOB
SRI.JOBI.A.THAMPI
SMT.T.V.SREEJA

RESPONDENTS:

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1. MULANTHURUTHY GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
MULANTHURUTHY P.O., ERNAKULAM DISTRICT, PIN:682314

2. VIKASANA SAMITHY, MULANTHURUTHY,
REPRESENTED BY M.M.ELIAS, MULLAPPILLY HOUSE,
MULANTHURUTHY P.O., ERNAKULAM DIST.

R1 BY ADV. SRI.BOBBY MATHEW KOOTHATTUKULAM

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C)No.31857 OF 2007

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DATED THIS THE 31ST OCTOBER, 2007

J U D G M E N T

The grievance of the petitioner who applied for a building permit for the construction of a compound wall on her property which is situated by the side of Ernakulam-Piravom main road is that the Mulanthuruthy Panchayat is not granting permission on the reason that a complaint was received from the 2nd respondent-Vikasana Samithy to the effect that a portion of the property upon which the petitioner intends to construct compound wall is puramboke.

2. Notice by special messenger was taken to both the respondents. The Panchayat has entered appearance through Advocate Mr.Bobby Mathew. The 2nd respondent-Vikasana Samithy, the complainant before the Panchayat has not entered appearance.

3. I have heard the submissions of Smt.Molly Jacob, counsel for the petitioner and Sri.Bobby Mathew, counsel for the Panchayat.

4. Mr.Bobby Mathew sought for time to file counter affidavit. The learned counsel submits that since a complaint was received by the Panchayat to the effect that the property in respect of which building permit is sought for takes in puramboke land, the Panchayat referred the matter to the Village Officer and the Panchayat is awaiting

reply from the Village Officer. The petitioner does not have any right to construct compound wall upon puramboke land and it will be illegal on the part of the Panchayat to permit such constructions.

5. Drawing my attention to Ext.P2 complaint, Smt.Molly Jacob would submit that upon the land which is now alleged to be puramboke, there stood a line-building and it is after demolishing a substantial portion of that line building that the petitioner intends to put up the compound wall. The learned counsel submitted that the petitioner will be prepared to submit an undertaking in the form of an affidavit before the Panchayat, to the effect that in the event of it being ultimately found that the compound wall has been constructed upon puramboke, the petitioner will be prepared to demolish and remove the compound wall so constructed, without raising any objections whatsoever. The petitioner cannot afford to delay the construction of the compound wall, counsel submits.

6. Having considered the rival submissions addressed at the Bar, I am of the view that the petitioner can be permitted to put up compound wall upon submitting an undertaking before the Panchayat. Accordingly the Writ Petition will stand disposed of issuing the following directions:-

The petitioner is directed to file an affidavit on stamp paper of appropriate value before the 1st respondent-Panchayat, undertaking to demolish and remove the compound wall to be constructed on the basis of the permit to be granted pursuant to Ext.P1 application, in the event of it being ultimately found on measurement by the Village Authorities that the wall has been constructed on Government puramboke. Once such an affidavit is noticed by the 1st respondent, the 1st respondent will pass orders on the petitioner's application for building permit granting permit to her for construction of compound wall subject to the terms of the affidavit. The affidavit will be filed by the petitioner within three days from today and permit shall be issued on the petitioner's application within seven days of receiving the affidavit.

(PIUS C.KURIAKOSE, JUDGE)

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